FILED
JUN 9 2005
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:	Case No. 04-30024-C-7
KATHRYN REYNOLDS,	
Debtor(s).	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

An evidentiary hearing was held on June 7, 2005, which focused upon the question of the value of the debtor's residence commonly known as 10605 Saxon Way, Truckee, California, which is located in a development known as Glenshire. The question was the value of the residence on the date this bankruptcy case was filed on October 6, 2004.

The evidence consisted of the testimony of Brian D. Lazarus, a California licensed real estate appraiser, coupled with his appraisal report. In addition, there was the testimony of the debtor Kathryn Reynolds. The issue of the value of the property on the date of the filing of the petition is important because it determines whether a judgment lien in favor of creditor Jessica Swedelius may or may not be avoided in whole or in part under 11 U.S.C. § 522(f).

FINDINGS OF FACT

The debtor valued her residence at $395,000 on the schedules that were filed at the time she filed the case on October 6, 2004.

The sum total of consensual liens against the property was $344,642. She claimed an exemption of $50,000 under California

41

law.

The debtor testified that she based her opinion of value of $395,000 on advertisements for sale of properties that she regarded as similar.

The appraisal report prepared by Mr. Lazarus, California licensed real estate appraiser No. AL023436, who works for Alpine Appraisers, Truckee, California, focuses upon different comparable sales in the appraisal in support of his $457,000 opinion of value.

The appraisal report indicates that a single family house in the relevant area ranges from a low value of $300,000 to a high value of $900,000 and ranges in construction from new construction to forty years old.

The debtor's residence occupies .29 acres and is four years old. It has three bedrooms and two bathrooms with gross living area of 1692 square feet and a two-car garage. It was purchased in October 2002 for $330,000.

Mr. Lazarus considered four properties that he regarded as comparable, all of which had closed escrow during the period June 2004 through October 1, 2004. One, which had the same number of rooms but was smaller by 158 square feet of gross living area and which was twelve years old, sold for $440,000 on October 1, 2004, at a price per square foot of $286.83. The appraiser was of the opinion that a $17,000 adjustment should be made to reflect the additional living space in order to yield an adjusted comparable price of $457,000.

The second comparable involved a residence that had four bedrooms and three bathrooms and 1844 square feet of gross living area that sold in July 2004 for $490,000 at a price per square feet

of $265.73. The appraiser judged the view to be better because mountains could be seen and made adjustments because of the room size and gross living area to produce an adjusted sales price of $454,000.

The third comparable sale, which was across the street at 10626 Saxon Way, was a two-bedroom, two-bathroom house of 1657 square feet that was twenty-seven years old and that sold in July 2004 for $425,000 at a price per square feet of $256.49. The appraiser made a $10,000 adjustment to reflect the difference in age, a $10,000 adjustment to reflect what he judged to be in poorer condition, and a $4,000 adjustment to reflect the difference in rooms and square footage, together with a $10,000 adjustment to reflect poorer quality of construction, yielding an adjusted comparable price of $459,000.

These three comparable properties were all located within approximately .25 miles of the debtor's property.

The fourth comparable was new construction approximately 1.74 miles northeast of the debtor's property, which was new construction with 1580 square feet of gross living area, which sold in June 2004 for $435,000 at a price per square feet of $275.32. The appraiser regarded the location as inferior because it was located on a busy street and made a $20,000 adjustment on the amount, together with a $3,000 adjustment on account of new construction, a $10,000 adjustment on account of better condition, and a $10,000 adjustment because of smaller size, yielding a net adjustment of $19,000 and an opinion of comparable price of $450,000.

The appraiser's conclusion was that the value of debtor's

property was $457,000 as of October 8, 2004. He had previously done a different appraisal as of April 25, 2005, that reached, based on different comparable sales that occurred in January and February 2005, a value of $482,000.

Mr. Lazarus explained the difference between $457,000 as of October 2004 and the $330,000 sale of the same property on October 1, 2004, as "most likely due to a combination of the subject's adequate to good maintenance and the increasing property value this area is experiencing." He added, "[t]here has been a more than typical increase in property values throughout the Truckee and Lake Tahoe areas over the past 3 months."

After carefully considering the appraiser's testimony and report and the debtor's testimony, the court is persuaded that the value of the property at 10605 Saxon Way, Truckee, California, was at least $440,000 as of the day of the filing of this bankruptcy case on October 6, 2004.

The house across the street that was twenty-seven years older, thirty-five square feet smaller, and not as well constructed is particularly revealing. The sales price within three months of the day of the filing of this petition was $256.49 per square, for a total sales price of $425,000. Applying that same $256.49 to the debtor's property would yield $433,981 as a value without making any adjustments to account for a twenty-three-year difference in age, and size, and quality of construction, all of which would favor upward adjustments. Although the debtor has suggested that landscaping might have been better, photographs of the area and the testimony reflect that most property is in a natural condition in the neighborhood.

Moreover, the appraiser's observation that prices have been rising is consistent with the subsequent appraisal such that the difference between July 2004 and October 2004 in the area reflect an increase in value of several thousands of dollars. Further, the $256.49 per square feet price is the least of any of the comparables in either of the reports. The court is persuaded that the comparables in the report as of October 8, 2004, are bona fide comparable properties.

If one considers the comparable that closed on October 1, 2004 (which would reflect a transaction negotiated somewhat earlier), and which was a smaller house by 158 square feet, this court's conclusion that the subject property is worth $440,000 is further supported. That property sold for $440,000.

In sum, the court concludes that the value of the property was $440,000 as of the day of the filing of the bankruptcy on October 4, 2004.

A judgment lien in favor of Jessica Swedelius was established by recording of an abstract of judgment on April 14, 2004, in the amount of $38,097.44.

CONCLUSIONS OF LAW

The debtor was entitled to exempt $50,000 in her residence pursuant to 11 U.S.C. § 522(b) (incorporating California exemptions).

The sum of consensual liens and the debtor's exemption as of the date of filing of bankruptcy was $394,642.

All value in excess of $394,642 is available to pay judgment lien claims. The $38,097.44 judgment lien in favor of Jessica Swedelius does not, in light of the $440,000 value of the debtor's

property, impair her exemption. It follows that on reconsideration of this court's prior order avoiding the lien, the lien is not eligible to be vacated and on reconsideration the motion to avoid the judgment lien of Jessica Swedelius will be denied.

An appropriate order will issue.

Dated: June 9, 2005.

UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Aristides G. Tzikas
865 University Ave.
Sacramento, CA 95825-6724

Alan R. Smith
505 Ridge Street
Reno, NV 89501

Dated: 6/10/05

Barbara Reynolds
DEPUTY CLERK

BARBARA REYNOLDS